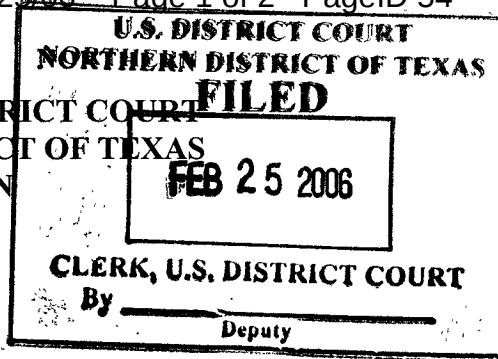


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



UNITED STATES OF AMERICA,)
Plaintiff)
)
v.)
)
ALBERT EVANS CURLIN,)
Defendant/Movant.)

3:92-CR-139-T

ORDER ACCEPTING FINDINGS AND RECOMMENDATION OF
THE UNITED STATES MAGISTRATE JUDGE

The United States Magistrate Judge made findings, conclusions and a recommendation in this case. Plaintiff filed objections, and the District Court has made a *de novo* review of those portions of the proposed findings and recommendation to which objection was made. The objections are overruled, and the Court ACCEPTS the Findings, Conclusions and Recommendation of the United States Magistrate Judge and DENIES Movant's rule 60(b) motion.

Alternatively the Court CONSTRUES the Rule 60(b) motion as a motion to vacate, set aside, or correct the sentence pursuant to 28 U.S.C. § 2255, and DIRECTS the Clerk of the Court to open a new civil action (nature of suit 510 directly assigned to the same district judge and magistrate judge), FILE the instant motion in that action as a § 2255 motion, and without further judicial action, immediately DISMISS the new § 2255 action without prejudice for want of jurisdiction to Movant's right to file a motion for leave to file a second or successive § 2255

motion in the United States Court of Appeals for the Fifth Circuit pursuant to 28 U.S.C. §§ 2244(b)(3)(A) and 2255.

It is further ordered that Movant's motion for appointment of counsel, filed on January 12, 2006, is DENIED as moot.

SO ORDERED this 25 day of Feb., 2006.

R. B. Malan
UNITED STATES DISTRICT JUDGE